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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170329334-7665-01]

RIN 0648-BG78

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limits in Longline Fisheries for 2017

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: NMFS issues regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to modify a limit on the amount of bigeye tuna (*Thunnus obesus*) that may be captured by U.S. longline vessels in the western and central Pacific Ocean (WCPO), to 3,138 metric tons (mt) for calendar year 2017. The limit does not apply to vessels in the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Once the limit of 3,138 mt is reached in 2017, retaining, transshipping, or landing bigeye tuna caught in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), which comprises the majority of the WCPO, will be prohibited for the remainder of the calendar year, with certain exceptions. This action is

necessary for the United States to satisfy its obligations under the Convention, to which it is a Contracting Party.

DATES: Effective on *[Insert date of publication in the Federal Register]*. Comments must be submitted in writing by *[Insert date 30 days after date of publication in the Federal Register]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0085, and the regulatory impact review (RIR) prepared for the interim rule, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2017-0085*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR, and the programmatic environmental assessment and supplemental information report prepared for National Environmental Policy Act purposes are available at *www.regulations.gov* or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above)

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO,
808-725-5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: *www.wcpfc.int/doc/convention-area-map*. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). The Commission includes Members, Cooperating Non-members, and Participating Territories (hereafter, collectively “Members”). The United States is a Member. American Samoa, Guam, and the CNMI are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States is obligated to implement the decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including implementation of the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS.

WCPFC Decision on Tropical Tunas

At its Thirteenth Regular Session, in December 2016, the WCPFC adopted Conservation and Management Measure (CMM) 2016-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2016-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. CMM 2016-01 maintains the provisions of its predecessor, CMM 2015-01. These and other CMMs are available at: www.wcpfc.int/conservation-and-management-measures.

The stated general objective of CMM 2016-01 and several of its predecessor

CMMs is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: for each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2016-01 went into effect February 2017, and is generally applicable for 2017. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for longline vessels include catch limits for bigeye tuna and a general provision not to increase catches of yellowfin tuna.

The Action

In 2016, NMFS established catch limits for bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States for calendar years 2016 and 2017, putting into place provisions of CMM 2015-01, the predecessor to CMM 2016-01 (81 FR 41239). The limit for 2016 was set at 3,554 mt and the limit for 2017 was set at 3,345 mt. (*Id.*). As in CMM 2015-01, under paragraphs 40-42 of CMM 2016-01, Commission members are to limit catches by their longline vessels of bigeye tuna in the Convention Area to specified levels in 2017. Under CMM 2016-01, the applicable limit for the United States in 2017 continues to be 3,345 mt. In addition, paragraph 40 of CMM 2016-01 reiterates the provision of CMM 2015-01 that states that any catch overage in a given year shall be deducted from the catch limit

for the following year. The Commission has not adopted limits for the longline fisheries of any of the U.S. Participating Territories, American Samoa, Guam, and the CNMI.

This interim rule is limited to implementing the 2017 calendar year longline bigeye tuna catch limit for U.S. fisheries in the Convention Area, as mandated under CMM 2016-01 which continues the relevant provisions adopted by CMM 2015-01. As stated above, the Commission-adopted limit for 2017 continues to be 3,345 mt less any overage of the limit applicable in 2016. The limit for 2016 was 3,554 mt (*see* 81 FR 41239). There was an overage of 207 mt in 2016, so the limit for 2017 is 3,138 mt. This interim rule adjusts the 2017 limit from the established 3,345 mt to 3,138 mt.

The 2017 longline bigeye tuna catch limit will apply only to U.S.-flagged longline vessels operating as part of the U.S. longline fisheries. The limit will not apply to U.S. longline vessels operating as part of the longline fisheries of American Samoa, the CNMI, or Guam. Existing regulations at 50 CFR 300.224(b), (c), and (d) detail the manner in which longline-caught bigeye tuna is attributed among the fisheries of the United States and the U.S. Participating Territories.

Consistent with the basis for the limits prescribed in CMM 2016-01 and with regulations issued by NMFS to implement bigeye tuna catch limits in U.S. longline fisheries as described below, the catch limit is measured in terms of retained catches—that is, bigeye tuna that are caught by longline gear and retained on board the vessel.

Announcement of the Limit Being Reached

As set forth under the existing regulations at 50 CFR 300.224(e), if NMFS determines that the limit is expected to be reached in 2017, NMFS will publish a notice in

the *Federal Register* to announce specific fishing restrictions that will be effective from the date the limit is expected to be reached until the end of the 2017 calendar year. NMFS will publish the notice of the restrictions at least 7 calendar days before the effective date to provide vessel owners and operators with advance notice. Periodic forecasts of the date the limit is expected to be reached will be made available to the public, such as by posting on a Web site, to help vessel owners and operators plan for the possibility of the limit being reached.

Restrictions after the Limit is Reached

As set forth under the existing regulations at 50 CFR 300.224(f), if the limit is reached, the restrictions that will be in effect will include the following:

1. Retain on board, transship, or land bigeye tuna: Starting on the effective date of the restrictions and extending through December 31 of 2017, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions can be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting is not subject to this 14-day landing restriction, so these vessels will be able to land bigeye tuna more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they are landed in

American Samoa, Guam, or the CNMI. However, the bigeye tuna must not be caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago, and must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

2. Transshipment of bigeye tuna to certain vessels: Starting on the effective date of the restrictions and extending through December 31 of 2017, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

3. Fishing inside and outside the Convention Area: To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, the interim rule establishes two additional, related prohibitions that are in effect starting on the effective date of the restrictions and extending through December 31 of 2017. First, vessels are prohibited from fishing with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel still must land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must

be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These two prohibitions do not apply to the following vessels: (1) vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI. This second group includes vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the conditions described above, and vessels included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because prior notice and the opportunity for public comment would be contrary to the public interest. This rule adjusts a bigeye tuna catch limit for U.S. longline fisheries in the Convention Area for 2017. Data on the amount of the 2016 overage only recently became available, and NMFS must publish the revised limit for 2017 as soon as possible to ensure it is not exceeded and the United States complies with its international legal obligations with respect to CMM 2016-01. Based on preliminary data available to date, NMFS expects that the applicable limit of 3,138 mt is likely to be reached in late summer of 2017. Delaying this rule to allow for

advance notice and public comment increases the risk that more than 3,138 mt of bigeye tuna would be caught by U.S. longline fisheries operating in the WCPO, potentially constituting non-compliance by the United States with respect to the longline bigeye tuna catch limit provisions of CMM 2016-01 for calendar year 2017. Because a delay in implementing this limit for 2017 could result in the United States violating its international legal obligations to conserve tropical tuna stocks in the WCPO, allowing advance notice and the opportunity for public comment would be contrary to the public interest.

Additionally, prior notice and opportunity for public comment is unnecessary because this rule only adjusts a previously established limit for 2017 (*see* 81 FR 24772 and 81 FR 41239). In the preambles to the proposed rule and the final rule that established the 2017 limit, NMFS provided notice that if there was an overage of the limit for 2016, NMFS would adjust the 2017 limit in accordance with the provisions of CMM 2015-01 and any other pertinent Commission decisions in force at that time. (*Id.*) Moreover, affected entities have been subject to longline bigeye tuna limits in the Convention Area since 2009, and the adjusted limit is similar to the limits implemented from 2009-2016. The regulated entities have received information regarding NMFS' estimates of the 2017 longline bigeye tuna catch in the Convention Area and the approximate date the catch limit may be reached via NMFS' Web site and other means.

NMFS will, however, take and consider public comments received on this interim final and, if appropriate, NMFS will issue a revised final rule in response to public comment.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. As described above, NMFS must implement the longline bigeye tuna catch limit provisions of CMM 2016-01 for 2017 as soon as possible, in order to ensure that the catch limit is not exceeded. The catch limit is intended to reduce or otherwise control fishing pressure on bigeye tuna in the WCPO in order to restore this stock to levels capable of producing maximum sustainable yield on a continuing basis. According to the NMFS stock status determination criteria, bigeye tuna in the Pacific Ocean is currently experiencing overfishing. Failure to immediately implement the 2017 catch limit would result in additional fishing pressure on this stock, in violation of international and domestic legal obligations.

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources,
Reporting and recordkeeping requirements, Treaties.

Dated: August 1, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.224, paragraph (a)(2) is revised to read as follows:

§ 300.224 Longline fishing restrictions.

(a) ***

(2) During calendar year 2017 there is a limit of 3,138 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

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